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THE PUBLIC SERVICE COMMISSIONS OF THE STATE OF NEW YORK

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To secure adequate and efficient public service at a just rate of compensation has been one of the most perplexing problems that the American people have attempted to solve. The rendering of public service is a business not subject to control by competition. In the main, such service is monopolistic. It is true that there may be a certain amount of competition between railroad companies, gas companies, telephone companies and the like, but as a regulative agency competition between public service corporations has been a failure. A cutting of rates in such competition is usually followed by inadequate service, by the failure of the weakest corporations or the merging of the competing corporations into one. Where the service is such that by nature it can be performed only by one or two corporations at the same time no reliance can be placed upon competition as a means of securing adequate service or reasonable rates. Competition acts effectively only in business that is open to a large number of persons on equal terms, and even in business of this nature, it is fast giving way to co-operation.

As competition cannot act as a regulative factor in public service industries, it follows that some other means must be sought to insure proper service. Up to the present time the natural requirements of the service and public opinion as expressed by newspapers and petitions of organized bodies have served to maintain a certain degree of efficiency in public utilities, but such control is uncertain and inadequate. Every public service corporation relies on the patronage of the public for its income, and in cases where the service is such that it can be accepted or left alone at will, the income of the company depends largely upon the satisfaction that the public derives from the service rendered. All public service, however, is not of such a nature. The people of a

city are obliged to use the water furnished by the municipal water works; they are practically obliged to use the gas furnished by the municipal gas works; they must patronize the municipal street railway or suffer great inconvenience; they must use the local telephone service or resort to primitive office methods. The company rendering services such as these has the public at its mercy. If not restrained by law or franchise regulations it may charge for its service "all the traffic will bear," and may render such service as it deems most practicable. The American city and the American state have in too many cases been the prey of such unrestrained corporations. Although the legislatures of the various states have always possessed the power to regulate rates within constitutional limits, they have been slow to exercise the power for the benefit of the people, and too often have been influenced by the corporation lobbyist more than by the welfare of their constituents. To a very large extent the public service corporation in this country has had a free hand. The distinction between public business and private business is a comparatively recent one. The people now, however, are fully aware that such distinction exists and are no longer depending upon the natural regulation of the business conducted by public service corporations. The let-alone policy is forever discarded.

In place of the let-alone policy, two methods of control are developing—the one may be termed complete public ownership and operation; the other, public regulation. As an example of complete ownership and operation, we have the water supply systems of most cities and towns. As a rule these works are built by public money and managed by public officials; all the work connected with the operation of the system is performed by persons in the direct employ of the city or town, except in case of construction, where the work is often performed by contract under the direction of a public official. Of all public utilities the supplying of water to municipalities is the one that has seemed best adapted for public ownership and operation. It is also safe to say that although many municipalities have experienced great difficulty in securing a sufficient supply of pure water, the system of public ownership of water works has been a decided success. In other lines of public service, however, public ownership and operation through the government of the municipality has not met with so great favor, although it is being

tried on all sorts of public work. At present there is undoubtedly a decided tendency toward increasing the absolute control of the people over their public utilities, but the change is not rapid and the tendency may be checked by the introduction of new methods of public regulation. One of these methods is the subject of this article.

The State of New York during the past year has adopted the most comprehensive and best devised plan for regulation of public service corporations ever tried in America. By the passage of an act known as the public service commissions law, in the spring of 1907, the legislature of the State of New York practically delegated its legislative power relative to the public service corporations named in the act to two public service commissions known, respectively, as the Public Service Commission of the First District and the Public Service Commission of the Second District. The public service commission for the first district was given jurisdiction over the territory comprised in the City of Greater New York, viz., New York, Kings, Queens and Richmond counties. The public service commission for the second district was given jurisdiction over the remainder of the state. Each commission consists of five men appointed by the governor with the consent of the senate, and after February 1, 1909, the term of each commissioner will be five years. To these commissions were given over the powers previously exercised by the railroad commissioners, the commission of gas and electricity and the state inspector of gas meters, and to the public service commission of the first district was given the powers previously exercised by the rapid transit railroad commissioners of New York City. Other functions not previously exercised by any state or local authority were also conferred upon the last-named commission. This commission, in describing its power in its report for 1907 (page 8), makes this statement: "This commission has a dual character. Upon the one hand, it has most full and complete powers of regulation over all public service corporations; upon the other, it has the important task of planning and constructing, possibly also of equipping and operating, rapid transit lines, whether subway or elevated. So far as the transportation problem is concerned, therefore, the commission has two strings to its bows. It may build subways, as its predecessor the rapid transit board did, and it may order existing companies to

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increase their service, adjust fares and freight rates, improve their equipment, etc., a function which neither the rapid transit board nor the railroad commissioners had to the extent which this commission now possesses and has been exercising for the past six months." It is evident from this statement of the powers of the commission that its creation is a most comprehensive effort to secure for the people of Greater New York an adequate means of controlling, regulating and creating public utilities in accordance with the needs of the city.

From the foregoing statement it is seen that the public service commission of the first district, although created by a state law and appointed by the governor, is in reality a city commission. Its jurisdiction is confined to Greater New York, and the problems with which it deals are all municipal problems. The public service commission of the second district has a wider range of territory to deal with and a greater variety of matters to supervise. Its power in no case, however, extends to the construction of public works. It has, therefore, no power corresponding to that possessed by the commission of the first district in the construction of rapid transit lines. Aside from this function, the commission of the second district has fully as great responsibility as that of the first district. As an example of such responsibility may be cited the matter of permitting the construction of the new Buffalo, Rochester and Western Railway, which is now pending. This line if built will parallel the New York Central and West Shore railways and will connect with the Boston and Maine at Troy and with the Wabash at Buffalo. The commission of the second district has absolute authority to decide whether this road may be constructed. Both commissions are authorized to fix maximum rates for public services, either upon application or upon their own motion, to investigate accidents, to order improvements in any phase of the public service under their jurisdiction that does not meet required standards, to authorize or refuse to authorize bond and stock issues, to supervise the expenditure of money raised by such issues, to require a uniform system of accounting of public service corporations of like character and to prosecute through their counsel corporations refusing to comply with their orders. A proposed amendment to the present law giving the commissions jurisdiction over telegraph and telephone companies is now before the state legislature.

It is clear that these public service commissions are endowed with extraordinary powers. Within the commissions are included the three divisions of government. In establishing rates and promulgating rules for the conduct of public service corporations they perform a distinctly legislative office; in devising plans for new subways and in letting contracts for their construction, or in testing gas, and gas and electric meters, their work is administrative; in hearing complaints, making investigations, listening to arguments on disputed points, issuing orders and rendering decisions, their functions are judicial.

Unfortunately, under the form of government in New York State, a decision of the commission cannot be final. Its conclusions and orders are subject to review by the courts, and, although it may be questioned whether any court in the state is as well constituted to decide justly on the questions in dispute as the commission, the right of appeal to the courts cannot be denied under the constitution. The act providing for the commissions takes the probability of court appeal into account and provides that cases arising under the act shall have preference over all other cases (except election cases) before the court regardless of their position on the calendar.

There are two phases of the work of these commissions that are somewhat experimental. These are the fixing of rates and the regulation of stock and bond issues. In fixing a rate for rendering public service, the commission performs a function that has heretofore been performed mainly by the legislature itself. It is true that a movement in this direction was instituted when the legislature in 1905 authorized the state commission of gas and electricity to fix the maximum prices to be charged by gas and electric companies for their products, but the powers possessed by that commission were trifling compared with the powers now resident in the public service commission. To fix a maximum rate for gas and electricity is comparatively easy; to prepare a schedule of rates for freight and passenger service on different lines of railroad, and under varying conditions, is a most perplexing problem. Strange to say, rate-making on the part of railroad and express companies has never been reduced to a scientific basis. The railroads in making their rates have not been guided by the cost of the service rendered, but by the probability of securing patronage at the rate

charged. No satisfactory study has yet been made of the relative cost of handling the different classes of freight. Neither has there been a satisfactory conclusion reached as to the adjustment of railroad expense between passengers and freight. The most intricate matter with which the Interstate Commerce Commission has had to deal has been the fixing of rates, and it was on this rock that the first interstate commerce law was wrecked. The courts failed to sustain the commission, and the law and the hard work of the commission went for naught. The public service commission of the second district is now studying the problem of passenger rates on the various railroads of the state, and in its report has discussed some of the matters involved in the fixing of the rates. In order to obtain the point of view of the railroads in the matter, the commission held hearings at various points in the state and examined the several representatives of the railroad companies relative to their methods of fixing rates, but the hearings resulted only in pointing out the fact already stated that the railroads themselves had no adequate basis for the establishment of the present schedule of rates.

The view expressed by the commission that adequate service is more important than a low rate is undoubtedly correct. The people desire to ride in safety and comfort and to travel in trains that run on time. Accidents, delays and public discomfort ought not to be tolerated in the present state of civilization, and the people are willing to pay a rate for railroad service that will be sufficient for the railroad to maintain a high degree of efficiency.

In fixing maximum rates for gas and electricity, the commission is likely to be much more successful, but in all rate-making the commission will probably be superseded by the courts, and, judging from the experience of the Interstate Commerce Commission, the work of the public service commission in this respect is not likely to be satisfactory, either to the commission itself or to the general public.

A much brighter prospect is before the commission in its work in the regulating of stock and bond issues. The greatest abuses in railroad making and railroad management in this country have been the stock deals of the great financiers who have used the railroads as playthings. If the plan outlined in the New York public service commission law is carried out, the railroads of New York State will no longer be a source of financial plunder. The public service com-

missions propose to know what is to be done with the money raised by public service corporations by the sale of stocks and bonds, and they are going to insist that the money so raised shall be used for the purpose for which it is procured. Railroads will be required to report to the commission the disbursements made of all moneys received from the sale of stocks or bonds.

Not the least among the services to be rendered by the commission is the oversight of railway equipment for the purpose of securing safety and proper dispatch of business. The work of the commission with reference to steam engines is a good illustration. The commission has in its service a boiler expert with a competent corps of assistants. These men inspect and test boilers of new locomotives and investigate the causes of all boiler accidents. The commission has established rules for the care of steam boilers and has required railroad companies to have the boilers of all engines used on their lines inspected at least once in three months and reports of such inspections forwarded to the commission. By these means it is hoped that every defective boiler will be eliminated from active service. The commission is extending a watchful eye over all kinds of appliances used by public service corporations and will order the improvements or modifications demanded by present-day conditions.

The regulation of freight car service is another important function of the up-state commission. The regulation of such service on railroads doing interstate business is one of the puzzling matters awaiting solution by the Interstate Commerce Commission, and the public service commission is likely to experience equally great difficulty in securing satisfactory results in the intra-state traffic. While there is little hope for a complete solution of the car service problem, the commission will undoubtedly be able to render great service to shippers by its study of the question and will probably render valuable assistance to the railroads as well. There seems to be a commendable desire on the part of the railroads to meet the standard of service set by the commission.

As a regulator of the public service corporations of the smaller cities of the state, the public service commission is likely to be much more efficient than the state legislature or city councils have ever been. To secure the passage of a bill through the state legislature for relief from the undue exactions of the street railway or

municipal gas or electric company, it required all the influence that could be exerted by the citizens of the city, and often two or three years would be consumed in securing the desired action. By the present plan, the abuse, whether it be large or small, may be laid before the public service commission, and will receive proper attention and be corrected with the greatest possible dispatch. In work of this kind, the commission constitutes a board of arbitration with power to secure the enforcement of their awards. As such it will prove a great boon to the smaller cities of the state.

Will the New York plan of controlling public service corporations prove successful? Judging from the work done by the two commissions during the first six months of their existence, there seems to be great probability of the ultimate success of the method. The great obstacles will be the secret deals of political managers and the agents of the great corporations. The present commissions are composed of exceptionally high-minded men, men of tested integrity and efficiency. Their devotion to the public service stands forth on every page of the reports recently issued by them. Unfortunately, commissions of this character are exceptional in public service. The New York state railroad commission, which was abolished by the act creating the public service commission, was a type of the usual set of appointive officers. They were in the main men with no particular fitness for the work for which they were appointed. Most of them were active workers in their political party, and were given the appointment either as a reward for past favors or as a retainer for future work. This railroad commission was in existence twenty-four years but at no time during its history did it have the full confidence of the people or the railroads. It did some good work, but it could not be counted upon to act in a large way in regard to any matters that were likely to influence votes for any political party. It may be useless to consider the probability of the deterioration of the present public service commissions to the low standard of the commissions they succeeded, but no one with an intimate knowledge of the conduct of political affairs in this country can hope for the long continuance in office of men chosen for their character and special fitness who do not render political service to the party responsible for their appointment. We may fondly talk of the merit system and indulge the hope that future governors of New York State will act with the

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same independence and wisdom that Governor Hughes has manifested, but so long as political parties are dominated by the spoils-men, our talk and hope are likely to be in vain. A governor of the domineering or tyrannical type would lose no time in rendering the public service commissions subservient to him. He would give them to understand that he must be consulted on every important matter, and that no independence of action would be tolerated. A governor of the spoilsman type would be likely to fill up the commissions with the worst class of minor political bosses. Manifestly, it would be in the interests of a political party to be able to exert direct control over the vast corporations of the state, and the spoilsmen would not be slow in recognizing this fact. The power that the commissions have to deal leniently or strictly with the railway, gas and electric corporations gives the party which controls the commissions a most powerful weapon. New York State has had governors that were ready to use weapons of this kind for their own advantage, and, not strange to say, some of the public service corporations stand ready to join hands with the unscrupulous politicians in an effort to render the statutes worthless. With such men in authority, if it could be brought about by a deal between the politicians and the public service commission that certain valuable privileges would be granted, or certain issues of stock be made, whereby the corporation would be greatly benefited at the expense of the public, there is no doubt that the deal would be made. It is well known that such has often been the case. New York State insurance department for many years rendered but little service to the public, owing mainly to the fact that the department was a political asset rather than an agent for the protection of the great body of policy holders. The insurance investigation revealed the fact that large sums of money were annually spent by all of the large companies for the purpose of securing political protection. If a mutual insurance company will go to such lengths in order merely to increase its volume of business and secure an advantage over its competitors, what may we expect of a public service corporation which is in a position to reap enormous benefits if allowed to plunder the public?

The hope of the ultimate success of the public service commissions depends upon the maintenance of their character and integrity. In the final analysis, the success of the plan rests with the people of the State of New York. If they continue to elect

governors who are fearless and independent, they will undoubtedly secure a large measure of success in the management of their public service corporations. On the other hand, if a reversion is made to the ordinary type of governor, it is more than probable that another form of managing public utilities will have to be sought. It is most fortunate that the commissions have started so well. If the men now in office are permitted to do their work unhampered for three or four years, the results obtained will be so clearly manifest that the public will demand a continuance of the same standard of work. Let us hope that such may be the case.